ORIGINAL

RECEIVED

DEC 16 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	
	)	
Calling Party Pays Service Option	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	
	)	

Comments of AirTouch Communications, Inc.

Kathleen Q. Abernathy
David A. Gross

AirTouch Communications
1818 N Street, Suite 800
Washington, D.C. 20036
(202) 293-3800

Charles D. Cosson
AirTouch Communications
One California Street, 29th Fl.
San Francisco, CA 94111
(415) 658-2434

December 16, 1997

0+4

TABLE OF CONTENTS

SUMMARY

Calling Party Pays ("CPP") enables customers of CMRS service providers to enjoy one of the benefits traditionally limited to landline telephone customers: the ability to control directly their purchases of telecommunications services. Customers purchase telecommunications services for two reasons: 1) to make outgoing calls, and 2) to be able to be reached by other calling parties. In the present environment, only customers of wireline network providers can directly control what they spend for both outgoing and incoming calls; customers subscribing to the services of wireless providers cannot.

Wireless customers indirectly control what they spend for incoming calls by keeping their phones turned off, not distributing their wireless phone number and taking other steps to limit incoming calls. Consequently, wireless customers are not using their services for incoming calls to the extent they otherwise would. And wireline customers are not obtaining the full benefits of calling a mobile subscriber who could otherwise be reached more often.

This distortion in consumer choices is referred to by economists as a welfare loss. CPP addresses this problem by removing the incentives for wireless customers to discourage incoming calls and use the wireless services they would otherwise select. CPP provides wireless customers with better control over what they spend and results in fuller use of the mobile capabilities offered by wireless services. This also creates consumer benefits for wireline customers and other calling parties who are more likely to reach the desired party on the first call.

The CMRS industry is highly competitive. There are at least four or five facilities-based competitors in most U.S. markets. This competition is driving the evolution of CMRS and making CMRS into much more of a mass market service. CMRS carriers are aggressively developing innovative pricing plans, a broader range of service options targeted to a larger number of market segments, and seeking to differentiate their services from their competitors. This evolution in the CMRS market is a fundamental change from the initial positioning of cellular services as targeting a smaller, high-end segment of the

market. As the CMRS market evolves toward being more of a mass-market offering, CPP is an important tool that can provide additional competitive benefits in the CMRS market.

The welfare loss created by the present system is also a result of the inability of customers to link the costs and value of a call in a fixed to mobile calling scenario. CPP addresses this problem as well, sending more accurate price signals to the wireline customer. And because CPP encourages consumers to more fully utilize the two-way broadband capabilities of CMRS, CPP can encourage the use of CMRS as a substitute for some traditional local exchange services. But other reforms are also needed to realign wireline prices before CMRS is a robust competitor in the market for these local exchange services. Customers of local exchange services today, particularly residential customers, generally enjoy unlimited local usage for a below-cost flat rate. It is this uneconomic pricing that distorts the competitiveness of the residential local exchange market.

In a CPP environment, CMRS providers must be able to identify the party placing a fixed to mobile call, rate the call, and collect revenue from that party. In order to collect this revenue, it is essential for CMRS carriers to obtain LEC billing and collection services. It is the LEC's services that are usually used by the customer to purchase CMRS services when placing a CPP call. Including CPP charges with charges for other services creates a much lower risk of uncollectibles. Additionally, incumbent LECs in particular have significant economies of scale in billing services, and the existing facilities necessary to render the bill and monitor collections. It is simply not economically viable for CMRS carriers to re-create these facilities. Consequently, where a LEC refuses to bill its customers for CPP charges they incur, CPP is simply not economically viable.

The Commission can address this barrier to CPP. Although LEC billing and collection services are detariffed, the Commission has broad authority to undertake measures necessary to promoting a statutory purpose, under Section 4(i) of the Communications Act. This authority, which was retained when billing and collection services were detariffed, is sufficient to support Commission action requiring ILECs to bill and collect CPP charges from ILEC customers. Requiring LECs to bill and collect for CPP charges would serve the statutory purposes of increasing consumer welfare and promoting local competition. Commission action can proceed in harmony with state regulatory action. At the state level, some ILECs hold out billing and collection services as generally available to the public through tariffs, making them common carrier services. State commissions can, and should, exercise their authority to ensure that the non-discrimination obligations created by these tariffs are honored.

But not every barrier to CPP warrants a federal regulatory response, or even any action by regulators at all. First, CPP should not be mandated; regulators should promote the ability of CMRS operators to offer customers a CPP option where business judgment dictates. And, the industry must address other problems associated with "leakage" – CPP calls to mobile customers that are uncollectible because, for example, the calling party cannot be identified. The CMRS industry also bears the responsibility of addressing technical problems in a manner responsive to business judgment. No government action requiring the use of particular network technology is needed.

There is also no need for comprehensive federal rules governing the terms and conditions of CPP or other federal consumer protection rules. Generally, consumers recognize and accept the principle that the party choosing to purchase telecommunications services pays the associated charges. Moreover, consumer protection issues regarding the terms and conditions of CPP are already being addressed by the states. AirTouch is committed to working with state regulators to ensure that consumers are fully informed about CPP and associated charges.

Vigorous competition in the CMRS market disciplines the rates charged to the calling party by CMRS carriers. First, the vast majority of calls to mobile subscribers are made by people known to the mobile subscribers. Consequently, landline to mobile rates will be a competitive part of CPP service options and will influence customers' purchase decisions. Second, CMRS carriers want to introduce CPP in order to increase incoming usage and provide a competitive alternative to landline services. Excessive CPP charges to wireline customers would lead to lower mobile incoming usage, reduced revenue and reduced wireless - wireline substitution, as calling parties opt for other means to contact the CMRS subscriber – likely dialing their landline number. Excessive CPP charges for incoming calls would be completely counterintuitive. These facts help explain why to date, there have been very few consumer complaints - both in the US and overseas - about CPP. Accordingly, there is little need for federal consumer protection oversight of CPP.

Before the Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	
	)	
Calling Party Pays Service Option	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	
	)	

Comments of AirTouch Communications, Inc.

AirTouch Communications, Inc. ("AirTouch")[1], hereby submits its comments in response to the Notice of Inquiry seeking information concerning a "Calling Party Pays" ("CPP") service option offered by Commercial Mobile Radio Service ("CMRS") providers.[2] AirTouch applauds the Commission for beginning this proceeding, and supports the Commission's interests in facilitating competition and increasing consumer options. CPP is one of the innovative services that will spur the transition of mobile telephony into a service appealing to a broader cross-section of consumers and possibly into a competitive substitute for landline local exchange service.

These comments provide information regarding AirTouch's experience with CPP environments both in the U.S. and abroad, document how CPP can stimulate demand,

[1] AirTouch is a CMRS provider with interests in cellular, paging, PCS and mobile satellite services, both domestic and international.

[2] "In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services," WT Docket No. 97-207, Notice of Inquiry, FCC 97-341 (October 23, 1997)("Notice").

identify for the Commission barriers to CPP in the U.S., and articulate legal and economic principles to guide the Commission's path forward.

DISCUSSION

I. A Calling Party Pays Option Will Benefit Consumers and Encourage Local Competition

In the early 1980's, when the nascent cellular industry was being developed by Bell System managers and engineers, a decision was made to have the cellular subscriber incur the charges for both incoming and outgoing calls. Like many other decisions, that decision was an attempt to solve problems embedded in the existing wireline rate structure, and it was a product of the times in which it was developed.

There were a number of reasons for this decision. First, Bell System managers sought to develop a rate structure that recovers traffic-sensitive costs without relying on averages and assumptions about usage patterns. Telephone company executives had learned that usage assumptions had proved to be less reliable than desired for purposes of revenue planning and network engineering.[3] The industry was also undergoing a great deal of turmoil associated with the introduction of long-distance competition. Long-distance competition had raised a number of difficult questions concerning jointly-

[3] See, e.g., Henry M. Lucas, "Who Pays for Incoming Calls?," Cellular Business Magazine, November 1991, at 48 ("Incoming Calls").

provided services, such as how revenue should be distributed where one carrier is expected to bill or collect revenue for another carrier's costs.[4]

Charging for both incoming and outgoing calling required much less effort in terms of estimating demand levels for the functions that create traffic-sensitive costs. It avoided some of the problems of negotiating revenue sharing arrangements with other network carriers that were being discussed in the long-distance industry. It was also simple and easy for customers to understand. The early cellular customer was likely to be an individual or business that had some experience with mobile communications; most paging systems and two-way radio systems charged for incoming calls. These customers also saw cellular in terms of the additional benefit of near-universal accessibility - a very attractive capability reflecting a business orientation in which a subscriber would pick up the costs of calls from clients and colleagues.

Today's mobile communications market is quite different. As a result of competition, technical innovation, and investments based on expected future growth, demand has exploded and prices have fallen. Mobile telephony is being marketed less as a premium, supplemental service, and more as a mass market telecommunications service.

---

[4]See, e.g., Incoming Calls, at 48; "In the Matter of Access Charge Reform," CC Docket No. 96-262, First Report and Order, FCC 97-158 (May 16, 1997), para. 20-21; see generally "MTS and WATS Market Structure," CC Docket 78-72; "Investigation of Access and Divestiture Related Tariffs," CC Docket No. 83-1145.

Continued growth of the industry, coupled with reform of wireline prices, could make mobile services a competitive alternative to wireline local exchange service. As the mobile industry continues to grow and become still more competitive, carriers have continuing incentives to introduce new service options, and lower pricing plans. CPP is one way that CMRS carriers are seeking to expand the market. As described below, a CPP option should be encouraged because it will benefit consumers and assist in creating an environment in which CMRS services may become competitive substitutes for wireline local exchange service.

One final point of clarification: the Notice seeks comment on whether reciprocal compensation may obviate or reduce the need for CMRS providers to implement CPP.[5] Reciprocal compensation is related to interconnection charges which concern how carriers recover their own costs for [termination] services provided to another carrier. CPP raises a separate issue of how carriers can assist in the recovery of another carrier's revenues. That is, CPP requires wireline carriers to bill and collect retail service charges for higher value mobile services, whereas reciprocal compensation reflects the mutual benefits provided between networks for termination of the other's calls.[6] For this reason, CPP is reciprocal compensation does not reduce the need for CPP.

---

[5]Notice, para. 9.

[6]The Commission has long required LECs to offer reciprocal compensation to CMRS carriers, although the rule has not been fully observed in practice. See Memorandum Opinion and Order, 59 RR 2d 1275, 1283 (App. B.)(1986)("Policy Statement"); Declaratory Ruling, 2 FCC Rcd 2910, 2915 (1987), aff'd on recon., 4 FCC Rcd 2369 (1989)("Declaratory Ruling"). The Commission codified the reciprocal compensation rule in the CMRS Second Report and Order, 9 FCC Rcd 1411, 1497-98 (1994), and its authority to issue rules concerning LEC-CMRS interconnection arrangements was recently affirmed by judicial review. See "Implementation of the Local Competition Provisions of the Telecommunications Act of 1996," First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996)("Local Competition

A. Calling Party Pays Benefits Consumers

Through its operating experience in both domestic and overseas markets, AirTouch is well acquainted with Calling Party Pays ("CPP"). A detailed description of CPP, including call flows and how it is marketed, is attached as Appendix A. CPP benefits consumers by permitting customers to control directly what they spend for both incoming and outgoing telecommunications.

Wireless customers indirectly control what they spend for incoming calls by keeping their phones turned off, not distributing their wireless phone number and taking other steps to limit incoming calls. Consequently, wireless customers are not using their services for incoming calls to the extent they otherwise would. And wireline customers are not obtaining the full benefits of calling a mobile subscriber who would otherwise be reached more often.

This distortion in consumer choices is referred to by economists as a welfare loss. CPP addresses this problem by removing the incentives for wireless customers to discourage incoming calls and use the wireless services they would otherwise select. CPP provides wireless customers with better control over what they spend and results in fuller use of the mobile capabilities offered by wireless services. This also creates consumer benefits for wireline customers and other calling parties who are more likely to reach the desired party on the first call.

Order"), aff'd in part and vacated in part sub. nom. Iowa Utilities Board v. FCC, 120 F.3d 753, 800, n.21, 1997 WL 403401 (8th Cir. 1997)("Iowa Utilities Board").

The present environment fails to link the costs of a call with the party valuing whether to make the call or not. This produces additional welfare losses because it artificially discourages the use of CMRS services and favors the use of wireline services for certain calls. CPP eliminates this problem and thereby sends more accurate price signals to the wireline customer. This places CMRS on a more equal footing with wireline services and makes it more likely that consumers will see the benefits of competitive substitutes for local exchange services: lower prices and more innovative services.

Empirical evidence shows that customers desire a CPP option. In its Cincinnati, OH, market, the CPP option has been elected by approximately 50% of the local subscriber base. As the Commission is aware, some CMRS customers have actually filed complaints objecting to charges for incoming calls.[7] Perhaps most importantly, consumers generally recognize and accept the principle that the party creating the costs of the services and choosing to purchase them should pay the associated charges. As CMRS services evolve into a mass market offering, consumers expect at least the option to have this principle also apply to wireless telecommunications services.

Empirical evidence also shows that CPP leads to increased usage of wireless services, and more balanced traffic flows between wireline and wireless networks.[8] This

[7]See, e.g., Public Notice, "Wireless Bureau Seeks Comment on Petition for Declaratory Ruling," (November 24, 1997)(Wireless Bureau requests comment on issues raised as a result of customer complaints regarding charges for incoming calls).

[8]The Notice recognizes that currently in the U.S., the vast majority of the traffic on CMRS networks is originating traffic, while traffic flows are more balanced on wireline networks. Notice, para. 10.

traffic re-balancing is an indication that consumers would desire to use wireless services for both incoming and outgoing calls, but do not do so because of their inability to control incoming calls directly.[9]

CPP has the ability to fundamentally alter consumer habits regarding telecommunications services, and to do so for the better. The benefits of CPP do not accrue solely to subscribers of CMRS carriers. When subscribers to wireless services are more likely to leave their phones on, making themselves more accessible, wireline customers are more likely to reach the intended party on the first try. Some outgoing calls are more likely to be made to wireless numbers because the calling party has greater confidence that the party will answer.[10]

The CPP option is a new innovative service that is indicative of the evolution of CMRS services – an evolution driven by competition. Competition in the CMRS market is causing CMRS operators to develop more innovative pricing plans, a broader range of service options, and to target a larger number of market segments. CPP also benefits consumers by making it more likely that consumers who elected not to purchase cellular services on the basis of price will now find mobile services within their price range.

---

[9]Research by the Yankee Group shows that 78% of cellular users say they would encourage people to call them but for the fact that they pay for receiving the calls. See News Release, "Wireless Users Can Now Save On Airtime Charges," Bell Atlantic (November 2, 1995) available at http://www.ba.com.

[10]As Jerry Seinfeld quipped about dialing someone's car phone and letting it ring 9-10 times: "What – are they in the back seat and can't get to the phone?"

Thereby, CPP can also increase the likelihood that CMRS services will develop into viable competitors in the separate market for traditional landline local exchange services, particularly residential local exchange services. As the Notice makes clear, this proceeding is not simply to promote increased customer choices for CMRS services, but to explore means of encouraging and facilitating competition in the local exchange telephone market.[11] CPP increases the likelihood that CMRS will compete with other local exchange services in two ways: 1) by encouraging CMRS subscribers to use their mobile phone for incoming as well as outgoing calls and 2) making it more likely that CMRS will be priced competitively with landline services.

While introducing CPP in the U.S. will facilitate competition, the Notice is correct to note that other factors, including pricing structures, will also affect the degree to which wireless services become a substitute for wireline local exchange services.[12] As AirTouch discusses below, the subsidies afforded wireline residential local exchange services have mislead the public about the cost of a call. True local competition involves eliminating subsidy distortions from wireline prices, thereby permitting consumers to rationally compare wireline and wireless local service options.

---

[11]Notice, para. 1.

[12]Notice, para.15-19.

B. Overseas and Domestic Experience With Calling Party Pays Demonstrates That CPP Stimulates Demand Suppressed by Existing Called Party Pays Arrangements

Economic theory predicts that the US's present called-party-pays system discourages wireless customers from using the incoming call capability of their mobile phones and thereby depresses demand for the fixed-to-mobile calling market, creating a welfare loss. Introduction of CPP would thereby encourage the use of CMRS services for incoming calls, and thereby stimulate demand for wireless subscriptions and wireless usage. The Notice asks for empirical evidence as to whether this has proved to be the case in actual practice. Actual practice from overseas and domestic markets demonstrates that CPP increases demand and can help correct the consumer welfare losses inherent in the present system.

As the Notice recognizes, CPP is widely used outside the United States.[13] The European experience provides useful evidence of the potential of CPP. In Europe, CPP has been the norm since the introduction of mobile telephony. Europe also enjoys more balanced traffic flows between networks. The average inbound/outbound ratio in the U.S. is approximately 20:80, while it is more evenly balanced in Europe.[14] The U.S.'s imbalances in traffic flows result in part from the fact that the existing called party pays

---

[13] Notice, para. 6.

[14] See Notice, para. 10. AirTouch understands that figures developed from internal measurements conducted by CMRS carriers show traffic ratios to be 22:78 for the U.S. and 45:55 for Europe. Other parties have alleged that as much as 94% of traffic exchanged between fixed and mobile networks are mobile to fixed calls. Letter from Alan Ciamporcero, Pacific Telesis, to Michele Farquhar, Chief, Wireless Telecommunications Bureau, December 7, 1995 (filed in CC Docket 95-185).

arrangement discourages wireless customers from using their ability to receive incoming calls while on the move and thereby depresses the level of fixed-to-mobile calling.

Thus, a CPP option is likely to generate increases in usage measurements as subscribers take steps to encourage more incoming calls. Again, empirical evidence bears this out. For AirTouch markets in Europe, the average minutes of usage ("MoU") is 60% higher than the US Industry Average of 100 MoU.[15] In the United States, AirTouch offers CPP in Michigan and Ohio and has noted usage increases in those markets as well.

Even more conclusive evidence comes from other overseas experiences where CPP has been introduced anew. In Argentina, Unifon reports a subscribership increase of 45% after CPP was introduced. Minifone, another Argentine carrier, also reports expected increases in call traffic by 25%.[16] The CTIA report notes that when Pele-phone, an Israeli wireless operator, launched CPP in 1994, average monthly traffic increased to 500 MoU, an increase of 11%, and that incoming and outgoing traffic came into balance.[17]

The Notice recognizes that other factors also influence CMRS subscribers' ability to receive incoming calls and thereby influence traffic flows. For example, the Notice observes that the higher level of traffic terminating on European wireless networks may be

---

[15]The Yankee Group reports that domestic MoU averages 100 MoU/month. "Wireless/Mobile Communications," September 1997, Vol. 5, No. 17, at 20. ("September 1997 Yankee Group Report").

[16]See Mobile Communications International, September 1997, page 22. The article also quotes staff of these Argentine carriers testifying that CPP is the cause of demand growth.

[17]"The Who, What and Why of Calling Party Pays,: CTIA, June 4, 1997, page 9.

due to the more extensive use of digital phones that have longer battery lives.[18] The use of digital service in the U.S., however, is increasing rapidly.[19] Moreover, where digital service is more widely available, it will be even more important for consumers to be able to take advantage of longer battery life by electing a CPP option.

Because CPP addresses the factor CMRS consumers value most - the price of services - other factors are likely to both be less important and to be addressed by carriers in response to consumer demand. To the extent there are consumers who would leave their phones on at all times but for battery life issues, there will be many more such customers where a CPP option is available. Consequently, carriers are more likely to speed deployment of digital service and develop other solutions to battery life issues where CPP is available and consumers no longer have a price disincentive to restrict incoming calls.[20]

C. "First-Minute Free" Options Do Not Provide the Full Degree of Consumer Benefits Provided by Calling Party Pays

As noted above, CPP stimulates demand for services that has been artificially suppressed because customers choose to turn off their phones to control incoming calls.

---

[18]Notice, para. 11.

[19]Digital subscribership is expected to reach over 60% of all cellular/PCS subscribers by 2001. September 1997 Yankee Group Report, at 19. In AirTouch's experience, digital battery life is approximately equal as between European and U.S. digital phones.

[20]To the extent that CPP encourages subscribers to leave their phones on at all times, this has related synergistic benefits in terms of battery life. Many mobile phone batteries last longer and perform better when they are allowed to drain fully before recharging. The present habit of turning the phone on and off intermittently often results in the battery not draining fully, effectively shortening battery life. Thus CPP itself can in some cases extend battery life.

The Notice observes that some CMRS providers offer subscribers a service option where the subscriber does not pay for the first minute of calls received, as well as services such as Caller ID, that enable CMRS subscribers a greater degree of control over incoming calls, and asks whether this option would have an effect on the demand for CPP.[21]

There is evidence from some sources that the "first minute free" option is attractive to customers, and results in better traffic balances to and from wireless networks.[22] The "first minute free" option is a helpful option, but it cannot substitute for CPP. Fundamentally, a "first minute free" option does not create equity between wireless and wireline customers with respect to being able to control costs of incoming calls, and eliminating disincentives to full availability. Moreover, "first incoming minute free" options fail to provide one of the key benefits of CPP: sending the correct pricing signals to a wireline customer. "First minute free" options, unlike CPP, fail to trigger the economic efficiencies gained where the costs are borne by the party making the decision whether or not to place the call.

D. Calling Party Pays Can Help Wireless Be a More Effective Competitor for Wireline Local Exchange Services But Further Pricing Reform is Necessary to Achieve Robust Local Competition

As the Notice recognizes, the pricing structure implicit in a CPP arrangement is different than the present structure in the U.S., and accordingly seeks information on the

[21]Notice, para. 14.

[22]See, e.g., Comments of APC, CC Docket 95-185 (March 4, 1996), at 9-10.

pricing structure of CMRS and wireline services.[23] In Europe, the ratio of wireless to landline prices is about 4:1, while in the US, the ratio is about 8:1.[24] The smaller disparity in prices leads to greater substitution of wireless usage for wireline usage.

The pricing disparity in the U.S. is due to a pricing structure that distorts pricing signals and is heavily biased towards wireline services. In both CMRS and wireline services, network costs are incurred when the subscriber both initiates and receives calls. In CMRS, a usage-sensitive charge is assessed in both situations, on a per-call basis. However, as the Notice recognizes, many wireline telephone subscribers pay a flat rate for unlimited local calling, and do not pay any additional charges for calls received, regardless of the calling party's location.[25] Residential wireline local exchange services are provided at below-cost rates, subsidized in part by wireline competitors. Reform is necessary to reduce this wireline-wireless price disparity.

CPP has the potential to correct this biased pricing structure somewhat. In a CPP environment, wireless customers will incur measured charges only for their outgoing usage, making wireless pricing comparable in structure to wireline pricing. Wireline customers will have incentives to make only those outgoing calls to CMRS subscribers that they value relative to the price of the call, creating more efficient use of wireline

[23]Notice, para. 15.

[24]Low wireless premiums have also aided penetration increases in other markets with CPP, such as Australia, Japan, and Israel. See September 1997 Yankee Group Report at 20, citing "Wireless Pricing: A Global Comparative Assessment," November 1996 Report from the Yankee Group.

[25]Notice, para. 15.

services. The existing arrangement provides no such incentives and favors traditional wireline services.

CPP, of course, would address this issue only with respect to outgoing calls to CMRS numbers. The Notice therefore questions whether CPP could in fact decrease the extent to which consumers view CMRS and wireline as close substitutes because CPP creates incentives for wireline customers to limit calls placed to wireless phones, while no such incentive is created for calls to other wireline phones.[26]

On one hand, it is at least equally likely that wireline customers – like wireless customers – are willing to pay a small premium for the added benefit of contacting a person on the move. Since the overall wireless market has been growing robustly, despite a difference in price from wireline service, it is reasonable to conclude that some wireline customers will also be willing to call wireless subscribers despite price differences.

On the other hand, the price differences between wireline and wireless services will deter substitution as the Notice suggests. The Commission has previously reported that wireless telephone service prices will have to fall well over 50 percent for wireless service to be fully-price competitive with traditional telephone service.[27] The Commission has also noted that the measured service of cellular rate plans constrains subscribers' use of

---

[26]Notice, para. 18.

[27]Second Competition Report, at 54; see First Competition Report, 10 FCC Rcd 8844, 8869-70 (1995).

the wireless phone, relative to the flat-rate plans offered by wireline carriers.[28] The wireless industry is highly competitive, and that competition is driving an evolution of the wireless industry, leading to falling prices for wireless services. And, of course CPP can also help bring CMRS services still closer to being price competitive with traditional local exchange services.[29] But the wireline local exchange market has yet to become competitive and to undergo even a regulatory evolution. Competition from wireless carriers in this market also requires rationalization of wireline pricing.[30]

Wireline charges are heavily subsidized. As the Commission has acknowledged, wireline rates do not fully recover the costs of basic local exchange services, but are subsidized from other services such as interstate access.[31] This fact has been amply documented by economists,[32] and by the incumbent LECs themselves, who face competitive threats in the market for the services contributing the subsidy to residential

---

[28]Second Competition Report, at 55; see Notice, para. 15, n.22.

[29]See, e.g., Second Competition Report, at 48.

[30]The Notice observes that the national average for flat rate residential wireline service was $19.49. At least one analyst has estimated that wireline usage averages 1000 minutes per month. See Second Competition Report, at 54, n.252, citing J. Bensche, Coming Supply Glut, Bensche-Marks, Vol. 96-07, June 24, 1996. Assuming 1000 minutes of wireline usage, this yields a per-minute rate of $.0015/per minute. However, the actual usage may be much higher, and thus the per minute rate may be much lower, considering there is no customer incentive to limit usage in an unlimited local calling arrangement. In contrast, the Commission reports that the average monthly cellular bill in 1996 was $47.70, although competition may lead to further declines. Second Competition Report, at 10.

[31]See, e.g., "In the Matter of Access Charge Reform," CC Docket No. 96-262, First Report and Order, FCC 97-158 (May 16, 1997), para. 29-30 ("Access Charge Order"). Both incumbent LECs and their competitors favor reform of this arrangement to eliminate these subsidies. See generally CC Docket 94-1.

[32]See, e.g., Joseph Farrell, "Creating Local Competition," 49 Fed. Comm. L. J. 201 (1996)("we must narrowly target assistance to those who need it. Lifeline rates make much more sense than massive schemes to try to keep all rates low."); Calvin S. Monson and Jeffrey H. Rohlfs, "The $20 Billion Impact of Local Competition in Telecommunications," (1993).

local exchange service.[33] Since these residential wireline services are provided at below-cost rates, CMRS providers cannot compete on price for those basic residential customers, even CMRS service providers whose costs are in fact lower than those of traditional LECs.

Moreover, part of the wireline subsidy contribution comes from CMRS carriers.[34] Raising wireline subsidies from a potential competitor is self-defeating. The effect of this arrangement is to further inhibit the entry of competitors whose lower costs would eliminate the need for subsidies in the first place. Since it is generally regulatory requirements that impose both the flat-rate, unlimited local calling rate structure and the below-cost rate levels, regulatory action can eliminate these other barriers to local competition. Such regulatory actions would reduce the likelihood that a CPP option would deter calls from wireline to mobile subscribers or hinder efforts to minimize distinctions between wireline and wireless telephony.

---

[33]See, e.g., "Avoiding the Toll", The Wall Street Journal March 20, 1995, p.R6 (RBOCs report about $.70 of every access dollar goes to subsidize local rates); Comments of Ameritech, CC Docket 96-45, April 12, 1996, at 3.

[34]These subsidies are both implicit subsidies embedded in interconnection rates not based on costs, and on contributions to explicit subsidy programs also not based on costs. See, e.g., Access Charge Order, para. 30 (describing the 'patchwork quilt of implicit and explicit subsidies'). Some progress on eliminating implicit subsidies is being made pursuant to the 1996 amendments to the Telecommunications Act, but the 1996 amendments did not intend to eliminate all implicit subsidies. See, e.g., Id., para. 33; Conference Report at 131 (implicit subsidies should be eliminated 'to the extent possible').

II. The Commission Should Require LECs to Provide The Billing and Collection Services Necessary to a Calling Party Pays Option

A. CPP Deployment Requires That Local Exchange Carriers Bill and Collect CPP Charges from Their Customers

The Notice requests comment on whether there are technical, regulatory, or other barriers impeding the availability of this service option.[35] By far, the biggest barriers to CPP are related to CMRS carriers' ability to collect revenue from the party calling the CMRS subscriber. In order for CPP to be economically viable, local exchange carriers must bill and collect from their own customers who place calls to CMRS subscribers. Although a CMRS carrier could theoretically do the billing itself, this is untenable as an economic matter.

It is simply not cost effective and results in unacceptably high levels of uncollectible charges for the CMRS carrier to bill directly the landline customer placing a call to a CMRS subscriber. It is the LEC's services that are usually used by the customer to purchase CMRS services when placing a CPP call. Including CPP charges on the LEC's bill with charges for other services creates a much lower risk of uncollectibles. In some cases, the billed amount is less than the cost of postage to mail the bill; in this instance separate bills from different carriers are much less effective than a single bill.

Additionally, incumbent LECs in particular have significant economies of scale in billing services. Incumbent LECs have relationships with other carriers, and the existing

---

[35] Notice, para. 5.

database facilities necessary. It is simply not economically viable for CMRS carriers to re-create these facilities. Simply put, where LECs refuse to bill and collect CPP charges from their subscribers, CPP cannot be introduced.

Some LECs do offer reasonable arrangements for Calling Party Pays either through tariff or contract.[36] To our knowledge, all incumbent LECs ("ILECs") offer billing and collection services to interexchange carriers, enhanced service providers, and other carriers. Some ILECs, however, have been unwilling to offer these services to CMRS carriers (or to do so on a just and reasonable basis), for the purposes of permitting CMRS carriers to offer CPP. These instances of ILEC discrimination may be motivated by a desire to thwart local competition. Accordingly, the Commission should intervene and require LECs to perform the billing services necessary to a Calling Party Pays option.

B. The Commission Has Statutory Authority to Require LECs to Perform Billing and Collection for CPP

Although the Commission detariffed LEC billing and collection services in 1986, in doing so the Commission noted that it retained "ancillary jurisdiction" under Title I of the Communications Act over LEC billing and collection services.[37] Such "ancillary

---

[36]See, e.g., US WEST Communications - Arizona, "Exchange and Network Services Tariff," Section 10, page 9 (effective 4-17-97). US WEST also offers comparable services in its New Mexico tariff, and through contract in Colorado. US WEST also makes its general billing and collection services available to enable Calling Party Pays through tariff in Utah, North Dakota, Iowa, Montana, Nebraska and Idaho.

[37]"In the Matter of Detariffing of Billing and Collection Services," Report and Order, 102 F.C.C. 2d 1150, 1168, n.47 (1986), citing NARUC v. FCC, 525 F.2d 630, 641 n.58 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976) (NARUC I). Although that decision suggested that LEC billing and collection was not a communications service, the Commission has since clarified that LEC billing for the services provided by unaffiliated carriers is "incidental" to the transmission of wire communications involved in the LEC's local exchange and exchange access service offerings. Thus, LEC billing and collection is properly considered a communications service under the Communications Act. See, e.g., "Policies and Rules

jurisdiction" stems from the broad mandate to "perform any and all acts, make such rules and regulations...not inconsistent with this Act, as may be necessary" in Section 4(i) of the Communications Act.[38] The exercise of this jurisdiction requires a record finding that such regulation would be directed at protecting or promoting a statutory purpose.[39]

Exercise of the Commission's Title I authority would serve at least three statutory purposes: CPP would promote competition in the market for local telecommunications services.[40] A CPP option would promote the statutory purpose of increasing communications service options for consumers.[41] Additionally, Commission action in this respect would avoid repetitive and burdensome complaint proceedings and thereby secure a more effective and efficient execution of the policies of the Communications Act.[42]

Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards," CC Docket 91-115, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 3528, 3533, n.50. (1992) (Second BNA Order"). The Commission continues to maintain that billing and collection services are not subject to common carrier regulation. See, e.g., "In the Matter of Access Charge Reform," CC Docket No. 96-262, Third Report and Order, FCC 97-401 (November 26, 1997) at 1, n.2.

[38]See 47 U.S.C. § 154(i). The Supreme Court has established that this statutory provision grants "broad authority" with "not niggardly but expansive powers." United States v. Southwestern Cable, 392 U.S. 157, 172 (1968).

[39]See, e.g., 102 F.C.C. 2d 1150, 1170, n.48; "Second Computer Inquiry," 77 FCC 2d 284, 433 (1979).

[40]The Telecommunications Act of 1996 was passed to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans by opening all telecommunications markets to competition." H.R. Rep. No. 104-458, 104th Cong., 2d Sess. (January 31, 1996)("Conference Report"). The Notice states that the Commission is committed to taking necessary actions to increase consumer options for local telephone service. Notice, para. 1.

[41]It is a purpose of the Communications Act to make communications available "so far as possible, to all the people of the United States." 47 U.S.C. § 151

[42]It is a purpose of the Communications Act to secure a more effective execution of this policy by vesting certain authority with the Commission. 47 U.S.C. § 151.